

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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**In the Matter of:**

**Implementation of the Commercial Spectrum  
Enhancement Act and Modernization of the  
Commission's Competitive Bidding Rules and  
Procedures**

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**WT Docket No. 05-211**

**To: The Federal Communications Commission**

**COMMENTS**

Paging Systems, Inc. ("PSI"), by its attorneys, hereby submits its Comments in response to the *Further Notice of Proposed Rule Making* in the above-referenced proceeding.<sup>1</sup> Comments are due to be filed on or before February 24, 2006.

**I.**

**INTRODUCTION**

1. In the *Further Notice*, the Federal Communications Commission ("Commission" or "FCC") requested comments on the elements of a proposal offered by Council Tree Communications, Inc. ("Council Tree") in connection with competitive bidding rules governing benefits reserved for designated entities ("DEs"). Comments were sought on prohibiting the award of bidding credits or benefits to entities that have a "material relationship" with a "large

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<sup>1</sup> In the Matter of Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, *Further Notice of Proposed Rule Making* ("Further Notice"), FCC 06-8, released February 3, 2006, 71 Fed. Reg. 2992 (2006).

in-region incumbent wireless services provider.”<sup>2</sup> The Commission further sought comment on whether it should restrict the award of designated entity benefits where a designated entity has a “material relationship” with a large entity that has a significant interest in communications service.<sup>3</sup>

## II.

### STATEMENT OF INTEREST

2. PSI is a Commercial Mobile Radio Service (“CMRS”) provider offering services to users under licenses governed by Parts 22, 24, 27, 80, 90 and 101 of the Commission’s Rules.

3. PSI has participated and acquired licenses in Auction Nos. 26, 40, 41, 42, 48, 57, 59 and 61. Because of those experiences, it monitors and has an interest in the Commission’s ongoing modifications to the general competitive bidding rules.

4. Although PSI has not participated in the auctions as a designated entity, it has bid against such entities in the auctions. It welcomes Commission scrutiny regarding “material relationships” that designated entities have with both in-region incumbent wireless service providers, as well as large entities with significant interests in communications services.

5. Accordingly, PSI commends the Commission for making the tentative decisions in the *Further Notice*. The Commission’s effort to maintain the integrity of the auction process is vital to its continued success. The Commission must make certain that its competitive bidding rules ensure a level playing field for all participants and that the auction process is run fairly, without loopholes for larger corporate entities to use a designated entity as its surrogate to achieve a discount on auction fees.

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<sup>2</sup> *Further Notice* at ¶ 1, citing Letter from Messrs. Steve C. Hillard and George T. Laub, Council Tree Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket Nos. 02-353, 04-356, RM-10956 (June 13, 1005) (Council Tree *ex parte*).

<sup>3</sup> *Further Notice* at ¶ 1.

### III.

#### DISCUSSION

##### **A. Common Ownership/Material Relationship**

6. In this proceeding, the thrust of Council Tree's arguments relate to whether a designated entity's "material relationship" actually converts the DE into an alter ego for a "large in-region incumbent wireless services provider" or a large entity that has a significant interest in communications service and if so, should such a large entity indirectly get an FCC discount for the designated entity's participation in the auction. The Commission is correct in carefully reviewing the issue of these types of material relationships with designated entities to insure that its designated entity policy is not subverted.

7. As the Commission stated, it must balance the goal of protecting the integrity and robustness of the bidding process with the goal of flexibility for applicants in developing business plans and obtaining capital, particularly for small businesses. However, as urged below, common ownership among auction applicants is a "material relationship" that may impact designated entity eligibility as well as the fundamental fairness of the auction for the other DE and non-DE participants.

##### **B. Commonly Controlled Applicants**

8. In these Comments, PSI is addressing a fundamental issue that is touched on only peripherally in the *Further Notice*. Setting aside the issue of credits for designated entities, the subsidiary issue is: if, through various ownership structures, an entity controls two or more applicants, should these applicants be allowed to participate as separate entities in the same spectrum auctions, with or without bidding agreements?

9. The Commission's designated entity rules are based on strict eligibility standards that are focused on "control" of the applicant entity.<sup>4</sup> Such a standard was designed to help identify as well as deter sham applicants. Nonetheless, in Auctions Nos. 57 and 61, designated entities controlled by the same person were allowed to participate, even while the Commission prohibited multiple applications by the same applicant. These commonly controlled entities were limited liability companies. Each limited liability company's voting interest was held by the same individual and that individual was the "manager" of each company. Thus, *de jure* and *de facto* control of each entity was exercised by the same individual.<sup>5</sup>

10. Common control may also be achieved through the use of corporations using voting and non-voting stock and limited partnership with the same general partner, but different limited partners. Such commonly controlled entities, if permitted to participate in spectrum auctions as separate applicants, would be able to each claim a bidding credit. Such arrangements create the potential for sham applicants and other harms that the auction rules were designed to deter.

11. As PSI experienced in the referenced recent auctions, commonly controlled applicants bid in the same markets, cooperated to hold a market while maintaining maximum eligibility among these entities and one entity would bid up in markets where the other entity was the provisional winning bidder. The activity unfairly impacted the auction process, giving the commonly controlled entities tactical and strategic advantages not available to the single bidders.

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<sup>4</sup> Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 9 FCC Rcd 2348, 2396, ¶277 (1994) (Competitive Bidding *Second Report and Order*).

<sup>5</sup> See Application for Review, *Public Notice*, In the Matter of Petition for Reconsideration and Motion for Stay of Paging Systems, Inc., DA 05-1099, released April 21, 2005, filed on May 23, 2005; Petition for Reconsideration, *Public Notice*, Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, DA 05-1047, released April 21, 2005, filed on May 23, 2005; and Supplement to Petition for Reconsideration, *Public Notice*, Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, DA 05-1047, released April 21, 2005, filed on August 26, 2005.

Even if the commonly controlled entities do not bid in the same market, there is potential for collusive activity. The focus is and has always been in connection with the Commission's competitive bidding rules that collusive conduct is detrimental not only to the competitiveness and integrity of the auction itself, but equally important, to the post-auction market for service to the public.

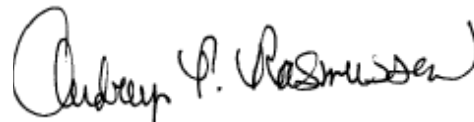
12. Therefore, in addition to restricting designated entities that are found to be improperly under the "control" of a larger corporate entity, the Commission must clarify that its auction policies prohibit commonly controlled entities from participating as separate applicants in the same auction.

### **III.**

#### **CONCLUSION**

Paging Systems, Inc. respectfully requests that the Commission consider these Comments.

Respectfully submitted,  
**PAGING SYSTEMS, INC.**



By:

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## **CERTIFICATE OF SERVICE**

I, Gladys L. Nichols, do hereby certify that on this 23<sup>rd</sup> day of February 2006, the foregoing **COMMENTS** were served on the following persons by first-class United States mail, postage prepaid:

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/s/  
Gladys L. Nichols